

CALENDAR ITEM

C15

A 22

08/09/16

PRC 6127.1

S 13

A. Franzoia

**CONSIDER TERMINATION AND ISSUANCE OF AN AGREEMENT
AND CONSENT TO ENCUMBRANCING OF LEASE**

APPLICANT/LESSEE:

Burlingame Bay LLC
228 Hamilton Avenue, Third Floor
Palo Alto, CA 94031

SECURED PARTY - LENDER:

Cathay Bank
2855 Kifer Road, Suite 245
Santa Clara, CA 95051

AREA, LAND TYPE, AND LOCATION:

1.978 acres, more or less, of filled and partially filled tidelands in San Francisco Bay adjacent to the Sanchez Channel and Burlingame Lagoon, Burlingame, San Mateo County.

AUTHORIZED USE:

Use and maintenance of an existing segment of the San Francisco Bay Trail including landscaping, paved walkways, bike paths, viewing areas, benches, trash containers, and commercial parking.

LEASE TERM:

24 years, beginning July 1, 2006.

CONSIDERATION:

\$32,000 per year, with an annual California Consumer Price Index (CCPI) adjustment as provided for in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$2,000,000 per occurrence.

CALENDAR ITEM NO. **C15** (CONT'D)

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6501.1; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

The lease area is comprised of a strip of land adjoining the southern and eastern sides of a commercial site owned in fee simple by the Lessee and includes the use and maintenance of an existing segment of the San Francisco Bay Trail. The strip of land is improved with landscaping, paved walkways, bike paths, viewing areas, benches, and trash containers that directly promote Public Trust principles, needs and values, including the enjoyment of the state's waterways.

The Lessee's fee simple ownership is located in an area that was historically tidal and marsh Bay lands that were subsequently filled and reclaimed. The land owned by the Lessee in fee simple passed into private ownership as part of Boundary Line Agreement 131 in the early 1970s. The lease area was conveyed to the State as part of Sovereign Land Exchange Agreement SLL 80 in 1982.

The privately owned upland adjacent to the lease area has been developed as a commercial office building and parking lot. The office building and parking lot are privately owned and maintained. A portion of the sovereign land adjacent to the privately owned upland is used for commercial parking in support of the office building.

On February 5, 2007, the Commission approved an amendment, assignment, and encumbrancing agreement for CA-Bay Park Plaza L.P. The Secured Party Lenders were Goldman Sachs Commercial Mortgage Capital, L.P.; Bear Stearns Commercial Mortgage, Inc.; Bank of America, N.A.; Citigroup Global Markets Realty Corp.; Column Financial, Inc.; German American Capital Corporation; Morgan Stanley Mortgage Capital, Inc.; and Wachovia Bank, National Association. Staff recommends that the previously authorized encumbrancing agreement be terminated.

The Lessee is applying for an Agreement and Consent to Encumbrancing of Lease in favor of Cathay Bank, the Secured Party-Lender (Secured Party-Lender or Lender/Beneficiary), in a loan amount not to exceed \$50 million. The purpose of the loan is for the permanent financing of Lessee's

CALENDAR ITEM NO. **C15** (CONT'D)

fee simple interest in acquiring the privately-held property adjoining the lease area.

The encumbrancing of the lease is a condition of the Lender/Beneficiary under the terms of a "Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing" which provides that the Lessee, as Trustor, grants, transfers and assigns to Trustee (Fidelity National Title Company) all rights of the Trustor under all present and future leases, licenses, franchises, concessions, subleases, rental agreements and other agreements for possession, use or occupancy pertaining to any of the property.

The encumbrancing of the lease would be implemented through a document, "Agreement and Consent to Encumbrancing of Lease," that would include protections for the State land associated with the lease. These protections include requirements that 1) no subsequent encumbrancing of the lease shall be executed without prior written consent of the Commission; 2) any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission; 3) if the Secured Party-Lender becomes the lessee, it shall be bound by all terms and conditions of the lease; 4) any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent; and 5) the duration of the encumbrancing agreement is limited to the term of the lease.

The encumbrancing of the lease would not permanently alienate the State's fee simple interest in the underlying land, and it would not permanently impair public rights. Based on the foregoing, Commission staff believes that the Agreement and Consent to Encumbrancing will not substantially interfere with Public Trust needs, at this location, at this time, or for the foreseeable term of the proposed lease.

The existing lease requires the Lessee to insure the lease premises and indemnify the state for any liability incurred as a result of the Lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

For all the reasons above, Commission staff believes the issuance of this Agreement and Consent to Encumbrancing is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

CALENDAR ITEM NO. **C15** (CONT'D)

OTHER PERTINENT INFORMATION:

1. On November 21, 2006, the Commission authorized a 24-year General Lease – Commercial Use to CA-Bay Park Plaza Limited Partnership, http://archives.slc.ca.gov/Meeting_Summaries/2006_Documents/11-21-06/Voting_Record_Stamped.pdf, for a portion of sovereign land that is currently used for parking for adjacent office buildings and for a portion of the San Francisco Bay Trail, including landscaping, paved walkways, bike paths, and viewing areas.
2. To reflect a corporate merger involving the lessee and refinancing, the Commission authorized an amendment of lease, assignment through corporate merger, and an encumbrancing of the lease as amended to CA-Bay Park Plaza Limited Partnership on February 5, 2007, http://archives.slc.ca.gov/Meeting_Summaries/2007_Documents/02-05-07/Voting_Record.pdf
3. On February 20, 2015, http://archives.slc.ca.gov/Meeting_Summaries/2015_Documents/02-20-15/Items_and_Exhibits/C54.pdf, the Commission authorized an assignment of lease from CA-Bay Park Plaza Limited Partnership to Hudson Bay Park Plaza, LLC.
4. On August 19, 2015, http://archives.slc.ca.gov/Meeting_Summaries/2015_Documents/08-19-15/Voting_Record.htm, the Commission authorized an assignment of lease from Hudson Bay Park Plaza, LLC, to Burlingame Bay LLC. The Lessee maintains the portion of the Bay Trail within the lease area pursuant to the lease and San Francisco Bay Conservation and Development Commission requirements.
5. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction, and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
6. The subject termination of agreement and new lease encumbrance are not projects as defined by the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

CALENDAR ITEM NO. **C15** (CONT'D)

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

AUTHORIZATION:

1. Authorize the termination of the Agreement and Consent to Encumbrancing of Lease No. PRC 6127.1 previously authorized by the Commission on February 5, 2007.
2. Authorize the Executive Officer or her designee to execute the document entitled "Agreement and Consent to Encumbrancing of Lease," allowing Lessee's right, title, and interest in Lease No. PRC 6127.1 to be pledged as partial security for a loan in the principal amount not to exceed \$50 million in favor of Cathay Bank, in substantially the same form as that on file in the Sacramento office of the Commission, effective August 9, 2016; authorize the Executive Officer or her designee to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.

EXHIBIT A

PRC 6127.1

LAND DESCRIPTION

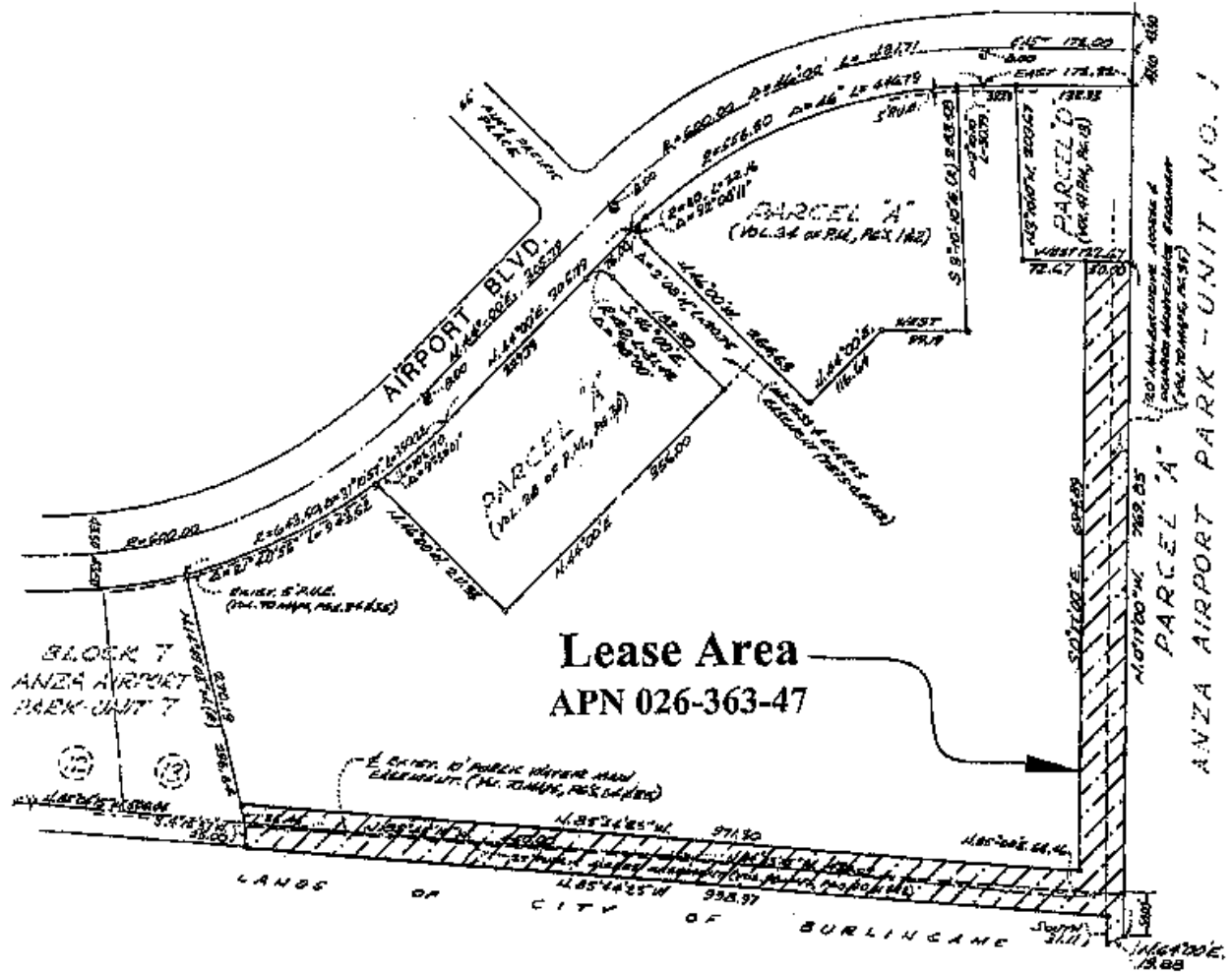
All that certain real property situate within the City of Burlingame, County of San Mateo, State of California, described as follows:

BEGINNING at the most Southerly corner of Lot 13 in Block 7, as shown on that certain map entitled "ANZA AIRPORT PARK UNIT NO. 7, CITY OF BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California, on January 15, 1979 in Book 98 of Maps at pages 90, 91 and 92; thence from said described point of beginning along the Southerly line of said Block 7, South 85° 44' 23" East 998.97 feet; thence South 31.11 feet to the most Southerly corner of said Block 7; thence along the Easterly line of said Block 7 North 64° 00' East 19.88 feet; thence North 0° 17' 00" West 689.30 feet to the Northeasterly corner of said Block 7; thence along the most Easterly line of Parcel "E", as said Parcel "E" is shown on that certain Parcel map entitled "PARCEL MAP BEING A RESUBDIVISION OF LOTS 5 AND 6, BLOCK NO. 8; ANZA AIRPORT PARK - UNIT NO. 6 (R.S.M. VOL. 70, PG. 35) BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", which map was recorded in Book 41 of Parcel Maps at page 13, on February 10, 1973, in the office of the Recorder of San Mateo County, California; thence continuing along last said course along the said Easterly line of Parcel "E", North 0° 17' 00" West 80.55 feet to the Southeasterly corner of Parcel "D", as said Parcel "D" is shown on said described Parcel Map; thence along the South line of said Parcel "D", West 50.00 feet to a point; thence leaving said South line of Parcel "D", South 0° 17' 00" East 80.55 feet to a point on the Northerly line of said Block 7; thence continuing along last course, along a line within said Block 7, South 0° 17' 00" East 614.34 feet; thence North 85° 44' 23" West 971.30 feet to a point on the Easterly line of said Lot 13; thence along said Easterly line of said Lot 13 South 14° 49' 03" East 26.45 feet; thence South 4° 15' 37" West 25.00 feet to the said described point of beginning.

END OF DESCRIPTION

NO SCALE

SITE



ANZA PARK, CITY OF BURLINGAME

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 6127.1
BURLINGAME BAY, LLC.
APN 026-363-47
GENERAL LEASE -
COMMERCIAL USE
SAN MATEO COUNTY



DJH 07/29/2015